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Testimony

In Opposition to

**HB 5044- AN ACT MAKING ADJUSTMENTS TO STATE EXPENDITURES FOR THE
FISCAL YEAR ENDING JUNE 30, 2017.**

Appropriations Committee

February 19, 2016

Good afternoon, Senator Bye, Representative Walker, Senator Kane, Representative Ziobron and distinguished members of the Appropriations Committee. Thank you for this opportunity to deliver testimony on HB 5044, An Act Making Adjustments to State Expenditures for the Fiscal Year Ending June 30, 2017.

My name is Lisa Wexler and I am the Probate Judge for the Westport/ Weston District. I will be commenting on the section of the bill regarding the complete absence of funding of probate courts in the adjustments to the state budget, and I ask for a restoration of our needed funds in the amount of \$14,000,000.

In my view, the defunding of the probate court system is a shortsighted policy. It has necessitated the increase in probate fees, which in turn is causing countless professionals to advise their clients to move out of this beautiful state once and for all- many are referring to this increase as the tipping point. The State of CT cannot afford to lose people who contribute in innumerable ways to our tax base- who pay gas taxes, property taxes, sales taxes, occupational fees and income taxes. We can't change our weather; the least we can do is not provide yet another incentive to move to Florida.

However, the reason I am here today to try and persuade this esteemed committee to restore probate court funding because I am convinced that this policy is fundamentally unfair and immoral. Any one of us may find ourselves in probate court one day for reasons we could not anticipate and which are beyond our control. All the taxpayers of the state have a moral obligation to support this essential branch of our judicial system.

The request for funds for a judicial branch of government is a little different than a request for funds for other governmental functions. Courts, and specifically the probate courts, existed in this state long before most other agencies were ever created. The functions of our probate courts are not discretionary. As a part of a co-equal third branch of government, probate courts have distinctive constitutional authority and significance.

People are in probate court because they are recently bereaved, or have a family member who is ill or disabled and cannot care for themselves. Or they have a baby grandchild with a mother who is addicted to drugs and they need to step in and ask us to appoint them to be guardians.

Most people recognize that probate courts perform the essential function of transferring property from a deceased person. But here in Connecticut, only 43 percent of our caseload in 2015 concerned decedent's estates, and that percent has been steadily diminishing over the last five years. So what are we doing 57 percent of the time?

Probate Courts in CT have exclusive jurisdiction over mental health matters. For me, that means I am in St Vincent's Hospital in Westport on average once a week to preside over involuntary commitments, conservatorships, probable cause hearings where patients admitted in an emergency wish to be released, as well as hearings to compel medicines over the objection of a patient. In each hearing, that patient is entitled to a lawyer because grave civil rights are at stake. But they can never afford one of their own, so it is our job to supply one. Those lawyers work for \$50.00 an hour, a rate that has existed since 2004. Patients are entitled by law to ask a judge for a hearing if they believe they are improperly hospitalized against their will. We are required by statute to provide that hearing within 72 hours of a request. Most patients apply for a fee waiver for the hearing itself, and I as a judge, routinely sign those requests. Why? Because these people are often the poorest of the poor, cycling in and out of mental hospitals throughout their lifetime, often bereft of family and friends, and subsisting on state benefits.

Looking at the attached chart, you can see that in 2011, the probate courts waived fees of \$800,000; by 2016, the number is estimated to be \$1,500,000, almost double. In terms of the total mental health matters, we handled 14,434 cases in 2011; by 2015, the number of cases was 20,465, representing 22 percent of our workload.

Another area of growth in our caseload has involved children with intellectual disabilities. These children are living longer and better. By the time they are 18, they are in our court so that the parents can become their guardians and conservators. These young adults are entitled to legal representation, and the system cannot turn away from providing counsel. Sometimes these proceedings are contested by previously divorced parents who get a second opportunity to argue their case in court. It is my responsibility as a judge to see that the minor's constitutional rights are protected.

Our population is aging; more people need conservators to manage their affairs. Many elderly find themselves without family or friends to serve on their behalf, necessitating the appointment of a stranger. Between the elderly and the mentally ill, conservator payments increased from \$2,100,000 in 2011 to \$4,500,000 estimated for 2016. The number of indigent conserved persons has increased by 75 percent. Conserved persons have the right to argue that they are perfectly fine and don't need such help; our constitution requires they be provided with competent counsel.

The legislature over time has increased the administrative burden of the probate court. We are required to review 706nts, the estate tax forms, for all decedents, regardless of

the size of the estate. Years ago, only decedents with taxable estates needed to submit this form. For name changes, our clerks have to ensure that the databases of deadly weapons and sex offender status have been checked and verified. The recent gun control legislation requires probate judges to inform conservators that it is now their responsibility to remove all guns from a conserved person's residence. Believe me, this is an obligation that I take very seriously.

You already know that since 2011, the probate court system has provided excellent value for the taxpayer, returning money to the budget every year. The superior court system skews the opposite way from probate: 90 percent of their budget comes from the legislature, only 10 percent from fees. In probate court, we are managing with 75 percent of our budget coming from fees, and only asking you for 25 percent. My total operating expense budget for my court is only \$14,000 per year, exclusive of salaries, and shared between two towns. By occupying space in our local town hall, we minimize expense while we are maximizing our accessibility to the public.

This week alone I had the following cases on my docket:

1. A 20 year old young man who is in a coma from an accidental drug overdose, whose parents were in my court to become conservators.
2. A chronic schizophrenic woman who applied to get out of the hospital against the wishes of her doctors.
3. A creditor who proved she was owed money from a man who lived and died in Venezuela but owned real estate in our district.
4. Two transgender name changes, one a minor.
5. A teenager who had smuggled himself into Texas from Honduras to live with his grandparents who were now applying to be his guardians.

Built into our entire system of justice is the recognition that all of us in America have an obligation to fund our judicial system so that the courts can function equitably and efficiently. The health of the probate court system should not depend upon the affluent and the fees their estates generate. The vast majority of the users of the probate court system are people who find themselves in situations that are terribly sad and over which they have no control. They have civil rights which must be protected under our constitution and cannot afford their own lawyers. In recognition of the importance of the work we do and the most vulnerable people we serve, the probate courts deserve to be funded by all the taxpayers of the state. I respectfully request that this committee appropriate \$14,000,000 to the probate court system. Thank you very much for listening to my testimony today. I am happy to answer any questions.

